THE HON'BLE SRI JUSTICE V.ESWARAIAH

W.P.NO.25736 OF 2005

Dt.2.12.2005

Between:

M/s.Laxmi Constructions, Hyderabad, rep. by

Managing Parter, V.Manmadha Rao … Petitioner

And

The Chief General Manager, Telecom,

A.P.Circle, BSNL, Hyderabad and

Another. … Respondents

ORDER:

Heard the learned counsel for the petitioner as well as the learned Standing Counsel for the respondents.

The petitioner submits that the respondents have awarded contract to the petitioner for cable laying works in Medak SSA for the years 2000-2001 i.e., Sardhana, Kothapally, Eldurthy, Kolcharam, Papannapet, Shivampet etc., exchanges. It is stated that the above said works have been completed and measurements were recorded by the concerned officials and bills were also submitted to the Divisional Engineer, who is in charge of the said areas, to cross check the work for the quality of work and correctness of the bill. The warranty of the work executed will be six months. After cross checking the works by the Divisional Engineer, the bills have to be passed and 90% of the amount has to be paid. It is stated that though the petitioner successfully completed the works, the respondents

have not taken any steps for releasing the amount. Therefore, the petitioner made a representation on 11.1.2005 for payment of the works executed for which a reply letter has been given on 22.3.2005. It is stated that the petitioner is entitled for the sum of Rs.39,63,475/-. But the said request has not been considered. Therefore, the petitioner seeks to issue writ of mandamus declaring the inaction on the part of the respondents in not releasing the bills for laying the underground cable in Sanga Reddy SSA for the year 2000-2001 as illegal and arbitrary and consequently direct the respondents to pay the bills after following the procedure for clearing the bills.

A perusal of the said letter dated 22.3.2005 addressed to the petitioner by the 2nd respondent goes to show that the petitioner filed representations on 17.1.2005, 25.1.2005 and 27.1.2005 for settlement of cable laying bills of M/s.Sujatha Constructions and M/s.Laxmi Constructions for the works in Medak SSA. It is stated that the said representations have been examined and the petitioner was intimated stating that the works carried out by the petitioner in respect of said Sujatha and Laxmi Constructions during the year 2000-01 were already settled and paid to the extent of the actual works based on the report submitted by the committee constituted for verification of works. With regard to the delay in submission of bills for the works said to have been carried out four years back, it is stated that some of the important supporting documents are missing and for the said claims the bills are under scrutiny by the SSA for the missing documents. Accordingly, it is informed that in further course of time, if necessary, the petitioner will inform to submit the same in accordance with the tender conditions and after receipt of the missing documents from the petitioner, if required, a committee will be constituted by the GMTD, Sangareddy to verify the works of the bills and based on the report of the verification committee, the bills will be processed for payment.

It is stated that the said letter was intimated on 22.3.2005 and the petitioner was not communicated anything about the submission of missing documents and if any communication is received, the

petitioner is ready and willing to submit all the required documents. But without taking any action in securing the missing documents for the purpose of constituting a committee, the respondents cannot sleep over the matter and deny payment of the bills.

The learned counsel for the petitioner appearing on behalf of the respondents submits that there is an arbitration clause in the agreement and if there is any dispute with regard to the payment of money or with regard to the execution of work, it is open for the petitioner to approach the arbitrator in accordance with the terms and conditions of the agreement and tender conditions, but it is not open for the petitioner to seek writ of mandamus.

The learned counsel submits that there is no dispute with regard to the settlement of issues for the purpose of constituting a committee. But the perusal of the impugned letter goes to show that there is a dispute and it is stated that the verification committed reduced the bill amount, which was intimated to the petitioner by SSA stating that it is not justified to entertain any further claim on the said bills. The learned counsel for the petitioner submits that the dispute is only relates to the contract works for the year 2000-2001 and not for the subsequent years.

I am unable to accept the said contention. As there is dispute with regard to the settlement of bills, no writ of mandamus is maintainable under Article 226 of the Constitution of India and in view of the specific remedy available under the agreement and tender conditions and it is open for the petitioner to approach the arbitrator for settlement of bills.

The writ petition is accordingly dismissed with liberty to the petitioner to approach the arbitrator for settlement of bills. No costs.

(V.ESWARAIAH, J.)

2.12.2005

kpr